No. 95-280

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

JOHN E. BUSER, JR., by his next friends,

JOHN E. and VIRGINIA BUSER,

Petitioners,

vs.

CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether legally significant per se violations of the Individuals with Disabilities Education Act ("IDEA") occurred because parents of an autistic student, were not invited to participate in staff quarterly progress reviews of their son's individualized education program ("IEP") prior to the 1984-85 school year and because, although the parents were active participants in their son's education their written requests generally were not included in their son's IEPs and because IEPs were adopted by oral vote in which the other members of the planning committee expressed their agreement with the IEPs before the parents were called upon to express their agreement or disagreement?

2. Whether legally significant per se violations of the IDEA occurred because, although the autistic student's IEPs each year contained a multitude of short term objectives, no specific date was spelled out in the IEPs for projected completion of each short term objective?

3. Whether a live case or controversy exists where there is no claim in this appeal that a student's special education program provided through age 21 was inadequate or deficient, but where equitable relief in the form of two years of post-age 22 job training is sought as "compensatory education" due to alleged procedural violations which are not alleged or proved to have deprived the student of educational benefits?

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CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT,

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

TO THE UNITED STATES SUPREME COURT:

Corpus Christi Independent School District, Respondent, files this Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals

for the Fifth Circuit, and asks this Court to deny the Petition to review the opinion issued April 21, 1995, by the Fifth Circuit Court of Appeals.[1]

OPINIONS BELOW, JURISDICTION, STATUTES AND REGULATIONS INVOLVED

The opinion of the Fifth Circuit Court of Appeals is reported as *Buser by Buser v. Corpus Christi Independent School*, 51 F.3d 490 (5th Cir. 1995), and is copied as Appendix A to the Petition. The opinion and judgment of the District Court are unreported. They are copied as Appendices C[2] and D to the Petition.

The applicable statutes are portions of the Individuals with Disabilities Act, 20 U.S.C.A. § 1400, et seq., including relevant portions of § 1401(a)(20), § 1412(2)(B), § 1415(b)(1)(C), § 1415(b)(2), § 1415(e)(2); regulations in 34 C.F.R. Part 300, including § 300.343, § 300.346. Copies are included in Petitioners' Appendices F through I, except for § 1412(2)(B) and § 1415(b)(2). These sections are copied herein in Appendix A.

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[1] Petitioner's Appendix A, p. A-1, incorrectly indicates the opinion was issued April 14, 1994. The correct date is April 21, 1995. See Petitioner's Appendix B, p. B-1 and the published opinion at 51 F.3d 490.

[2] Petitioner's Appendix C accurately reflects the District Court's opinion except for the omissions as stated in Respondent's Appendix C.

The Texas State Board of Education regulations include the following relevant portions of the Texas Administrative Code, 19 T.A.C. § 89.220, § 89.221(a), (b)(7) and (10). (Respondent's Appendix B)

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Court Below.

This suit concerns the individual education program of a student with disabilities and is based on 20 U.S.C.A. § 1400, et seq., now known as the Individuals with Disabilities Education Act ("IDEA"). This proceeding was initiated in 1986 when Dr. and Mrs. John E. Buser, Sr., requested a due process hearing pursuant to 20 U.S.C.A. § 1415(b)(2) regarding the individual education program of their autistic son, John E. Buser, Jr. ("John"). John was then age 21 years, 9 months. His eligibility for special education services ended with the 1985-86 school year. See 20 U.S.C.A. 1412(2)(B) and 19 T.A.C. § 89.220(a).

The administrative hearing officer denied relief. (R. 268-289).[3] The Busers then sought judicial review under 20 U.S.C.A. § 1415(e)(2). The United States District Court for the Southern District of Texas determined that Corpus Christi

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[3] The notation "R.____" represents the page of the District Court record. The notation "Ad.R. ____" represents the page of the administrative record. The notation "Pet. App." refers to the appendices attached to the Petition.

Independent School District ("CCISD" or the "School District") complied with statutory requirements, and denied relief. (R. 4-27; reproduced in Pet. App. C, except for the omissions described in Respondent's Appendix C.

The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court. See *Buser by Buser v. Corpus Christi Independent School*, 51 F.3d 490 (5th Cir. 1995). (Pet. App. A) The Busers then filed a Petition for Writ of Certiorari to this Court.

B. Statement of Facts.

John E. Buser, Jr., is an autistic 31-year old man born August 3, 1964, (Ad.R. 29) who was enrolled in Corpus Christi Independent School District through the 1985-86 school year. Pursuant to the Education of the Handicapped Act (now known as the Individuals with Disabilities Education Act or "IDEA"), 20 U.S.C.A. § 1400, et seq, John's individualized education program ("IEP") was developed at least annually by a committee composed of school district personnel and John's parents. In Texas, the program planning team described in 34 C.F.R. § 300.343 is called the "Admission, Review, and Dismissal Committee" or "ARD Committee."[4] See 19 T.A.C. § 89.221.

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[4] Petitioners assert that the term "Admission, Review, and Dismissal" Committee (or "ARD" Committee) is the School District's terminology. See Petition p. 4, footnote 1. This is incorrect. The terminology is that of the Texas State Board of Education. See 19 T.A.C. § 89.221.

Dr. and Mrs. Buser are very well educated and knowledgeable parents. Virginia Buser holds master's degrees in both history and in English, and is active as a parent advocate for disabled students and their parents, including assisting parents with respect to procedural rights under the IDEA. (Ad.R. 58-63). Dr. Buser holds a Ph.D. and is a professor of history at Del Mar College in Corpus Christi. (Ad.R. 63, 694)

Dr. and Mrs. Buser were very active in John's education. (Ad.R. 345, 657) At ARD Committee meetings through the years prior to and including 1984, Dr. and/or Mrs. Buser indicated their agreement with all the IEPs developed for John at such committee meetings. Disagreement began thereafter. See the summary in the District Court's decision, footnote 3. (Pet. App. C-12 and C-13). To ascertain whether committee members agreed or disagreed with the plan, the members were polled at the conclusion of each ARD Committee meeting. For the first time, the Busers in May 1986 invoked the due process procedure in 20 U.S.C. 1415(b)(2) to challenge the ARD Committee's decision.

The Busers' challenge resulted in decisions at the administrative, district court, and appellate court levels, all of which rejected the Busers' claims. (See Pet. App. A and C.) John's parents do not seek reversal of the lower court's judgment based on any alleged deficiency in John's program. Instead, they argue that per se procedural violations occurred which, standing alone and without proof of any harm to John, require the School District to provide the equitable remedy of

compensatory education for John in the form of the two years of job training.

Over the years, John's ARD Committees included in his IEPs many annual goals and many more short-term objectives as component parts of the annual goals. The number of short-term objectives varied over the years, from a low of 14 in the April 25, 1979, IEP to a high of 130 in the February 22, 1983, IEP. (Ad.R. 949-960, 1006-1014, 1024-1034, 1098-1107, 1119-1121, 1126-1127, 1139-1140) The IEPs included a starting date for instruction on the objectives, but did not state a stopping date or projected completion date for the objectives.

John's individualized educational program developed for each school year was put into action using a variety of techniques and equipment to address his learning and behavioral needs. For example, during his last two school years, John's program included, among other things, work on neuromotor and perceptive skills, pre-vocational and vocational skills, community activities, and independent living skills. (Ad.R. 363-377).

John's IEPs were implemented each year by his teachers, all of whom were trained in teaching special education. In addition, they attended numerous conferences, workshops, and seminars on autism; one of his teachers had received state-wide recognition as a teacher of autistic children; the school principal had been honored in 1979 as principal of the Year by the National Society for Children and Adults of Autism; the school had been cited by the state as

having an exemplary program and was selected as a demonstration school; and the school district developed a teacher's guide for teaching autistic children. (Ad.R. 76, 638-639, 646-658) Furthermore, at the request of Dr. and Mrs. Buser, the school district contracted with Dr. Lawrence McCarron, a pioneer in the field of vocational evaluation, to conduct for John a vocational assessment using the McCarron/Dial evaluation system. (R. 434-35)

During the course of each school year as John's IEPs were implemented and evaluated on a daily basis (R. 384, 396), his progress in completing components of his IEPs was also reviewed on a quarterly basis by school staff. As John reached his targeted mastery levels on short-term objectives, instruction on such completed objectives was discontinued, while instruction on the non-mastered objectives continued. (R. 389-90; 661) Beginning in the 1984-85 school year, Dr. and Mrs. Buser were invited to participate in these periodic reviews or "staffings." (Ad.R. 682-683)

In their appeal, the Busers characterize the quarterly staffings as "IEP meetings" within the meaning of 34 C.F.R. § 300.343. However, quarterly staffings to review implementation and progress were not held for the purpose of proposing changes to John's IEP (see 20 U.S.C.A. § 1415(b)(1)(C)) or to consider the substantial provisions in the IEP. Furthermore, the Busers recharacterize the cessation of instruction on completed objectives as "dropping" such objectives or changing John's IEPs. On the contrary, determining mastery of specific short-term objectives and moving forward with the unmastered objectives is an essential

part of the instructional process and demonstrates an orderly progression in the implementation of John's IEPs.

SUMMARY OF REASONS TO DENY THE WRIT

1. John's parents were afforded, and they utilized, ample opportunity for meaningful participation in their son's education. No violations of their rights to meaningful participation occurred.

2. John's individualized education programs did not omit short-term objectives; his IEPs contained a multitude of short-term objectives. The inclusion in the IEP of projected dates for completion of the objectives is not an essential element of a short-term objective and is not required.

3. There is no live case or controversy regarding the appropriateness of John's educational program and no complaint of an educational deficiency. Therefore, there is no live dispute about any educational deprivation - the necessary underpinning for the requested equitable relief of "compensatory" job training.

ARGUMENT FOR REASONS TO DENY THE WRIT

1. Meaningful parental participation

Quarterly reviews: John's parents claim that quarterly staff meetings when educators ascertained the extent to which John achieved short term objectives in his IEP and decided to

conclude instruction on those objectives which had been mastered constituted "meetings" contemplated by 300 C.F.R. § 300.343, and can be held only if the parents are notified and provided the opportunity to participate. Although the Busers acknowledge that John's short-term objectives were not changed at the quarterly staff meetings (Pet. p. 17), they state that John's "IEP was reviewed and revised" at the quarterly meetings (Pet. p. 16) and his IEP "was changed by dropping objectives on the basis that they had been achieved."

Neither the regulations nor logic even suggest that educators are required to involve parents in determining when during a school year a student has achieved a short-term objective in his educational program and to move on in a logical sequence with instruction on the remaining unachieved components of a student's program. As correctly noted by the Court of Appeals, "Mastering a short-term objective is not a 'change' under 20 U.S.C.A. § 1415(b)(1)(C), but merely constitutes the completion of a listed objective in the IEP. The successful completion of a short-term objective is a necessary step in the implementation of the IEP if the annual goal is to be achieved." *Buser*, 51 F.3d at 494, n. 5; Pet. App. A-12.

A meeting within the meaning of § 1415(b)(1)(C) and 34 C.F.R. § 300.343 to assess the effectiveness of an IEP, to propose revisions, or to add or delete components is a very different type of meeting than the staff quarterly reviews. Formulation and evaluation of a plan requires parental notification; implementation of a plan in a logical progression does not.

If an ARD meeting were required before a teacher could discontinue instruction on a short term objective despite the student's mastery of the objective, the entire due process procedure encompassed by 20 U.S.C.A. § 1415 could be invoked to challenge the educator's judgment of mastery for each objective within each goal. Such a procedure would not only interfere with educational judgment in contravention of the directives in *Board of Educ., Etc. v. Rowley*, 458 U.S. 176, 206-08 (1982), and *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989), but would be highly impractical. Considering John's program alone, the potential number of decisions about mastery which could be subject to meetings with parents, administrative review, and judicial review is extremely large.[5]

The ability of the classroom teacher to move the student through the series of short term objectives set forth in the IEP would be seriously compromised, and the educators' professional judgment of mastery would be subject to

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[5] The record shows the following number of objectives identified as means to work toward John's annual goals:

4/25/79 IEP: 14 objectives (Ad.R. 1139-1140)
5/ 1/80 IEP: 19 objectives (Ad.R. 1126-1127)
4/30/81 IEP: 65 objectives (Ad.R. 1119-1121)
5/ 3/82 IEP: 81 objectives (Ad.R. 1098-1107)
2/22/83 IEP: 130 objectives (Ad.R. 949- 960)
5/18/84 IEP: 40 objectives (Ad.R. 1024-1034)
9/ 6/85 IEP: over 32 objectives (Ad.R.1006-1014)
(pages 1006-1008 illegible)

micro-management by administrative hearing officers and judges. There is no legal or logical foundation for Appellant's argument.

Incorporating parental requests in the IEP: John's parents assert denial of a meaningful opportunity for them to have input in their son's education because their written recommendations and written suggestions generally were not included in the IEPs (Pet. p. 5, 20) This is a new argument which was not an issue before the Court of Appeals. Furthermore, the Busers do not point out in their Petition the nature, type, or basis of their written recommendations or suggestions. They assume the existence of an evidentiary presumption, and then attempt to shift the burden of proof by stating that the School District "failed to introduce evidence of one single instance where it had included a request by the Busers in the IEP." (Pet. p. 20)

The Busers point out no regulation or interpretation which guarantees that parents' written suggestions will be included in their child's IEP or that school districts will be held to have denied meaningful parental input unless school districts prove that parents' written suggestions have been incorporated into their children's IEPs.

Method to ascertain consensus: The Busers assert denial of a meaningful opportunity for input based on the practice at the conclusion of ARD Committee meetings when the members of the committee are polled about whether they agree or disagree with the IEP as developed. The Busers assert that, because the other members or the committee voted

first and the Busers voted last, it appeared to them that the school district was "railroading" the decision and that the parents had no effective voice. (Pet. p. 21) The Busers offer no theory on how it would make a difference if they were the first, middle, or last members of the committee to express their agreement or disagreement with the IEP as developed. Moreover, the Busers were well aware of their procedural rights to challenge IEPs, and Mrs. Buser serves as advisor to other parents regarding IDEA procedures. (Ad.R. 58-63, 79-80)

Individualized educational plans are to be developed using a cooperative approach in an effort to reach consensus. The inclusion of statutory procedural safeguards recognizes that consensus may not always be reached. *Burlington School Committee v. Dept. of Educ.*, 471 U.S. 359, 368-69 (1985).

Meetings eventually must be brought to closure either with or without achievement of consensus. To determine if consensus has been reached and to make a record of which members agree and which, if any, disagree with the student's program, polling of the participants is needed. The Busers do not suggest a different method, but merely assert they voted last and therefore felt outvoted and were thus prevented from becoming equal participants because of the voting technique. (Pet. p. 20-21).

The District Court correctly analyzed "equal participation" for parents as the opportunity for "meaningful input" and the "right to seek review of any decisions they think inappropriate," citing *Honig v. Doe*, 484 U.S. 305, 311

(1988). The Court further referred to the Supreme Court's interpretation of parents' role as a "large measure of participation" for parents and guardians. *Board of Education v. Rowley*, 458 U.S. 176, 205 (1982). (R. 12), (Pet. App. C-16)

The Supreme Court additionally addressed the concept of consensus and discussed the extensive procedural safeguards in IDEA as a means to insure the full participation of parents and proper resolution of substantive disagreements if consensus cannot be reached and disputes are not resolved. *Burlington School Committee v. Dept. of Educ.*, 471 U.S. 359, 368-69 (1985).

See also *Doe by Gonzales v. Maher*, 793 F.2d 1470, 1488-90 (9th Cir. 1986), aff'd as modified, *Honig v. Doe*, 484 U.S. 305 (1988). Parents do not have a veto power. *Doe* at 1489. If consensus is not reached, mediation or other efforts to resolve the disagreement may be employed, and/or the due process procedures under 20 U.S.C.A. § 1415 may be invoked.

The Busers failed to prove the existence of error in the ARD Committee voting procedures and failed to prove any impact on John's educational program or services attributable to the voting procedures.

2. Short-term objectives

The Busers allege John's IEPs were "fatally flawed" because the school district allegedly omitted short-term objectives from John's IEPs (Pet. p. i; iii; 22-23). They then acknowledge the inclusion of objectives by stating, "Yes, they contained objectives, but they were not short-term instructional objectives because no short-term was stated in the IEPs." (Pet. p. 23)

The Busers assert the component parts (i.e. short-term objectives) of John's annual goals do not qualify as "short-term objectives" under 20 U.S.C.A. § 1401(a)(20)(B) because the objectives contained in John's IEPs did not spell out the "term;" i.e. the specific time projected for completion of each objective.[6] Despite the Busers' argument of a "clearly expressed Congressional intention that the IEP . . . specify the short term of the 'short-term instructional objectives,'" (Pet. p. 26) there is no language in the statute to support this argument. The district court correctly stated that the IDEA does not require time frames in the IEP. (App. C-27 and C-28).

Although the Busers complain about the school's practice of reviewing John's IEPs quarterly (at least to the extent his parents were not invited prior to the 1984-85 school

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[6] From 1979 through the 1985-1986 school year, John's IEPs contained nearly 400 objectives. See Ad.R. 949-960, 1006-1014, 1024-1034, 1098-1107, 1119-1121, 1126-1127, 1139-1140.

year), they do not complain that quarterly reviews were an inappropriate method to review progress. The District Court was clearly correct in concluding that the quarterly review practice "suggests that the objectives had at least a ninety-day review period, making the objectives shorter in duration than annual goals." (R. 19; Pet. App. C-28)

An excellent analysis of § 1420(a)(20)[7] is set forth in *Doe By and Through Doe v. Defendant I*, 898 F.2d 1186 (6th Cir. 1990), in which the court determined that omission of items specifically required by the statute did not render the student's IEP invalid, and to do so based on "these technical deviations from section 1401(19) . . . is to exalt form over substance." *Id.* at 1190. The Sixth Circuit viewed Rowley's emphasis on procedural safeguards as referring to "the process by which the IEP is produced, rather than the myriad of technical items that must be included in the written document." *Id.*

There is no claim in the Petition that absence of specific time frames in John's IEPs had any negative impact on his educational program. The Busers simply argue that time frames must be set out in an IEP, and request relief in the form of two years of job training for John. The courts below were clearly correct in rejecting the Busers' claim.

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[7] The section was previously identified as § 1401(19).

3. Mootness

This case is moot. There is no live controversy about any issues upon which the requested relief could be based. U.S. Const. Art 3; *Honig v. Doe*, 484 U.S. 305, 317-18 (1988).

The relief sought by the Busers is founded on principles of equity. They argue the case is not moot because the relief requested could be implemented. (Pet. p. 30) They do not base their request for two years of job training for John on some actual or perceived deficiency in the educational services provided to John; rather, they allege procedural violations related to the parents' opportunities for meaningful input and an alleged procedural violation for failure to spell out in John's IEPs the projected ending date for each of the many short-term objectives in his educational program.

Despite *Honig*, some courts of appeal have held that post age 22 compensatory education is an available remedy under § 1415(e)(2). They analogize compensatory education as an equitable method to remedy past deficiencies in educational services to the concept of retroactive reimbursement as an equitable method to remedy parents' incurring costs for private schooling when schools have not offered an appropriate placement. See *Pihl v. Massachusetts Dept. of Educ.*, 9 F.3d 184, 187-90 (1st Cir. 1993), and cases cited therein.

Past deprivation or extreme inadequacy of services is the legal *sina qua non* of post-age 22 compensatory education cases. The equitable foundation for relief is either complete denial of services or such grossly inadequate services or placement that it amounts to very serious deprivation of a student's right to services. This stands in stark contrast to the case before this Court. Where the appeal is based entirely on procedural issues without any claim that the alleged procedural violations deprived John of educational benefits, there is no live issue upon which the requested relief could be founded.

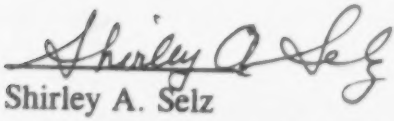
There is no link between the alleged procedural violations and the requested relief. The Busers have not brought forward any claim of an actual deprivation as a base for equitable relief. Therefore, whether or not post-age 22 compensatory education is available under IDEA in cases of total or severe deprivation, it is not available in this case. There is no live controversy about any issue which could support the relief sought regardless of the legal correctness or incorrectness of the Busers' procedural claims. Any ruling on the Busers' issues about parental participation and about specification of time periods in short-term objectives would amount to only an advisory opinion in the circumstances of this case.

CONCLUSION

There are no issues in this case that call for an exercise of this Court's power of supervision. There are no special or important reasons to grant the writ. The Petition

rests on alleged procedural violations, none of which is alleged to have caused John to lose educational benefits. There is no pleading or proof of an equitable basis for the equitable relief requested, thereby making any opinion advisory only. Neither the Court of Appeals nor the District Court departed from the accepted and usual course of judicial proceedings. The Petition should be denied.

Respectfully submitted,



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APPENDIX A

20 U.S.C.A. 1412. Eligibility requirements

In order to qualify for assistance under this subchapter in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

* * *

(2) . . . Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that--

(B) a free appropriate public education will be available for all children with disabilities . . . between the ages of three and twenty-one within the State . . .

20 U.S.C.A. § 1415. Procedural Safeguards

* * *

(b) Required procedures; hearing

* * *

(2) Whenever a complaint has been received under paragraph (1) of the subsection, the parents or

guardians shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

APPENDIX B

19 T.A.C. § 89.220. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, service provided in accordance with this subchapter shall be available to all eligible students beginning on their third birthday and to all eligible students who have not reached their 22nd birthday on September 1 of the current scholastic year.

19 T.A.C. § 89.221. The Admission Review, and Dismissal (ARD) Committee

(a) Each school district or special education cooperative shall establish at least one admission, review and dismissal (ARD) committee which shall make decisions concerning the educational program of a student referred for consideration for special education services.

(b) The ARD Committee shall perform the following functions for each student considered for special education services:

* * *

(7) develop the individual educational plan;

* * *

(10) review all special education assignments at least annually to determine the need for continuation, change, reappraisal, or termination.

APPENDIX C

Petitioner's Appendix C is a reproduction of the district court's decision except for several typographical errors and the following significant omissions:

1. Page C-9, the first sentence in the last paragraph states, "While contesting the fact that his IEPs even contained short term objectives without notice to his parents."

   The sentence should state,

   "While contesting the fact that his IEPs even contained short-term objectives, plaintiff argues that CCISD eliminated or discontinued short-term objectives without notice to his parents."

2. Page C-12 omits an entire paragraph following the marking for footnote 3.

   The paragraph to be inserted states,

   "This Court is not persuaded that the IEPs were changed without notice to the parents, as the parents, year after year, agreed to the proposed IEPs. The Court reasons that had short-term objectives been improperly eliminated, the parents would have noticed the absence of the short-term objectives at the annual review of the plaintiff's IEP. At that review, the parents could have requested that the eliminated

objectives be reinstated, or could have disagreed with the proposed IEP. The evidence shows that plaintiff's parents approved all IEPs except the one for the last school year and the transition IEP. Plaintiff's evidence fails to support his claim of a per se violation of the IDEA."

3. Page C-17 omits an entire paragraph between ". . . vote" at ARD meetings." and "One of the plaintiff's special education teacher. . .

The paragraph to be inserted states,

"The Court now examines the issues of whether plaintiff's IEPs were calculated to enable plaintiff to receive educational benefits. *Board of Education v. Rowley*, 458 U.S. 176, 206, 102 S. Ct. 3034, 3051 (1982). The evidence is undisputed that plaintiff is autistic, and that plaintiff is severely disabled by his autism. Plaintiff has severe communication/language and perceptual disorders, exhibits bizarre behavior patterns, and has problems with motility. At the onset of his special education, plaintiff's was placed in a self-contained autistic classroom, where he received individualized instruction from his special education teachers and aides."

4. Page C-28, the first sentence of the second paragraph states, "Pat Cox testified that, based upon his review

of plaintiff's IEPs, he could find no prioritization of plaintiff's behavioral objectives was shown by headings and sub-headings."

The text is actually two sentences and should state,

"Pat Cox testified that, based upon his review of plaintiff's IEPs, he could find no prioritization of plaintiff's behavioral objectives. Susan Abbott testified that prioritization of behavioral objectives was shown by headings and sub-headings"